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January 27, 1993

Ms. Donna R. Searcy
Secretary
Federal Communication Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments in MM Docket No. 92-266

Dear Ms. Searcy

Transmitted herewith, on behalf of Media General Cable of Fairfax, Inc., operator of the franchised cable system in Fairfax County; Virginia, are the original and nine (9) copies of its Comments in the above-referenced Docket.

Should you have any questions with respect to the above matter, please contact the undersigned.

Very truly yours

Wayne Coy Jr.

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

In the Matter of

Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

MM Docket 92-266

To: The Commission

COMMENTS

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SUMMARY OF COMMENTS

Media General Cable of Fairfax Inc., the cable franchisee for the City of Fairfax and Fairfax County, Virginia serving more than 200,000 subscribers, urges the Commission to be aware of the great degree of difficulty in creating "distinct classes" of cable systems necessary for a fair and equitable "benchmarking" approach to rate regulation. Notwithstanding that difficulty, Media General generally would support a benchmarking approach if, after a benchmark rate is established, the opportunity is afforded any cable system to present a cost-of-service analysis that would supersede and replace the benchmark result. Media General further urges that the FCC remain active as the federal agency to resolve differences occurring at the local level so that one tribunal, not many, creates a uniform body of law and interpretation of the Cable Act for the entire cable industry.

Additionally, Media General believes that the Cable Act requires that a "reasonable and properly allocated" (not nominal) portion of joint and common costs should be included in the basic service fee. Furthermore, to ease administrative burdens and eliminate the need for endless rate adjustment proceedings, Media General supports a proposal to "pass through" increases in cost of program services (including retransmission fees) in the basic fee as a way to keep the basic fee concurrent with those costs without

need for rate adjustment hearings. Further, Media General advocates the inclusion of cost-of-living data in any SPI indexing.

Media General supports an open market for converters, but only if controls are in place to ensure that only compatible and addressable converters can be sold in its franchise area. Media General urges that cable operators be given an option on what and when to itemize different charges on a subscriber's billing. Media General believes that protections need to be put in place if only a nominal charge may be made for changes in service.

Media General believes that both goodwill and start-up losses represent bonafide business investments which should be fully recovered. Finally, Media General believes that any cost-of-service approach should provide for a reasonable rate-of-return commensurate with the risk factors in the industry.

JAN 27 1993

FEDERAL COMMUNICATIONS COMMISSION
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Federal Communications Commission

MM Docket 92-266

COMMENTS

BACKGROUND

1. Media General is the franchised cable operator for the City of Fairfax and Fairfax County, Virginia, an area of 400 square miles. The plant consists of a total of 3,862 miles of cable with 1,674 miles of aerial cable and 2,188 miles of underground cable. The system operates from two headends, feeding 10 "hubs". There are 52 miles of Dedicated Interconnect, Dual Cable, 450 Megahertz,

120 Channel capacity. Over 400 county facilities have been wired and are receiving basic service. The total capital expenditure to date is \$333,000,000.00

2. It operates under a franchise requiring a 5% Franchise Fee on total revenues, with annual grant payments totalling 1.25% of total revenues plus \$225,000.00; a one-time franchise acceptance fee of \$225,000.00; equipment grant obligations totalling \$3,200,000.00; a \$4,800,000.00, 400 mile ICN network -- with half of its bandwidth used solely by Fairfax County as mandated by the franchise that has an annual operating cost of \$457,000.00; a commitment to provide 19 channels for public, educational and governmental use of which 11 channels are currently active, at an annual operating cost of \$176,000.00. The 400 county facilities receive service at no cost. In addition Media General has been paying just under \$1,000,000.00 every six months to the Copyright Royalty Tribunal.

3. The system has over 200,000 subscribers, with 50% subscribing to one or more premium channels in addition to the basic tiers of service.

4. The County employs a total of 11 employees in the Cable Regulatory Division of its Consumer Affairs Office who zealously protect and preserve what they perceive to be the interests of the public with respect to cable service. The County also employs 23 additional people whose function is to provide programming for two PEG channels currently assigned to the County.

THE PROPOSALS

5. Media General realizes that the Commission did not undertake this or any of the other rule makings on its own motion or without considerable direction and impetus from the Congress of the United States. Given the enormous complexity of the industry and the extremely short period of time to initiate and complete comprehensive rule makings such as this one, Media General feels that the likelihood of arriving at a solution -- any solution -- that could fairly serve the entire industry is all but non-existent and impossible.

6. The basic problem is the huge differences that exist among the operating systems themselves:

- The size of the franchise area
- The number of activated channels
- The number of franchising authorities having jurisdiction over parts of a single system
- The maturity of the system
- The degree of competition from multi-channel and other video services
- The nature and extent of PEG commitments
- The demographics and attitudes of subscribers
- Franchise fees, public access fees, and educational access fees
- Other in-kind services required by franchising authorities
- Other unique system characteristics affecting operating and/or capital costs

7. Cable systems are not like radio or television stations which are easily divided into a few well-defined operating classifications and about which generalizations, averaging and benchmarking can be easily determined. Cable systems are simply too diverse in every conceivable dimension to be susceptible to effective categorization. Media General has examined the various proposals in this proceeding and finds many significant concerns with each of them. The notion, expressed in paragraph 37 of the NPRM, that the Commission "could separate cable systems into distinct classes" is the fundamental concern under the benchmarking alternative. As noted above, Media General believes that there would have to be either an unworkably large number of classes or each class would have to be untenably broad so that the benchmarking process would be unduly cumbersome. Attached is a statement prepared by Media General on the Rate Structure Questionnaire filed with the Commission on January 22, 1993, describing deficiencies in the data gathering that will lead to inappropriate classifications detrimental to Media General's interests.

THE FAVORED SOLUTION

8. Media General believes that the Congress has asked the Commission to do the impossible in resolving all of the issues inherent in implementation of the Cable Act in such a short period of time. In order to even have a shot at fairness and equity, a comprehensive study and data gathering process would be necessary.

Needless to say such a process is not given a chance in a 30-day comment period and a two-month period thereafter in which to promulgate meaningful regulations.

9. At the very least, a second chance to have input in the process should be given by way of a Further Notice of Proposed Rulemaking once the basic formulation of the regulatory scheme has been preliminarily adopted. There are simply too many issues on the same plate.

10. Notwithstanding all of that, Media General generally would support an attempt at a benchmark approach if it turns out 1) that distinct classes can be formed with sufficient commonality among the critical factors to render meaningful comparison among the members of the class, 2) that the opportunity to "override" the benchmark result with a superseding finding on a cost-of-service approach has real meaning and is enforceable, and 3) that the Commission clearly asserts exclusive jurisdiction over the cost-of-service appeal.

11. If the development of distinct classes becomes bogged down, one of Media General's major concerns, the cost-of-service for all systems would hold the best prospects for success. The two biggest drawbacks -- administrative costs and a wide range of rates for basic service in otherwise apparently similar systems which happen to have different cost bases -- would be out-weighed by the

prospect of a reasonable rate of return for each individual system. Media General has built what it believes to be one of the finest systems in the country. As a consequence Media General believes its capital investment and operating costs per subscriber are the highest in the country. Whether the FCC adopts the benchmark standard with a meaningful cost-of-service override or a straight cost-of-service standard Media General seeks only a fair and reasonable return on its investment.

FEDERAL REGULATION

12. There can be no doubt that the single biggest factor in the enormous growth in the cable industry was the adoption of the Cable Television Act of 1984. Growth in service to the public was the result of growth in investment in plant and equipment, and growth in investment in programming. Media General strongly believes that the development of national standards for technical and other matters and freedom from a wide variety of local constraints has fostered that growth. It, therefore, urges in the strongest possible terms, that the Commission must remain in the forefront of the regulatory picture by both developing the rate regulation plan and fine-tuning it after implementation, by serving as the jurisdictional body to appeal local franchise decisions, and by creating a uniform interpretation of the Act that all systems can adhere to and abide by. The thought of numerous franchising authorities each independently interpreting the Act without recourse to the Commission deeply concerns Media General. If, as

the Cable Act provides, the local franchising authority is to be the first line of regulation, interpretation and certification by the Commission must remain immediately available as the second line. Resorting to appeals back to franchise authorities that have a vested interest in their own initial decision and/or resort to local courts will lead to hopeless, tangled, unfair, and punitive results to both cable operators and ultimately subscribers themselves.

ALLOCATION OF JOINT AND COMMON COSTS

13. Media General has to assume that at least a possible economic model is that its subscribers only subscribe to the basic service since that must be clearly offered as a choice.^{1/} Yet, in paragraphs 53 et seq., the notion is introduced that the basic rate could include "a nominal contribution" to the joint and common costs of the system as a whole. This seems contrary to the statutory provision that basic tier rates can include "only such portion of the joint and common costs . . . as is . . . reasonably and properly allocated to the basic service tier." (47 U.S.C. Section 543 (b)(2)(c)(iii). These seem to be in direct conflict with one another. Media General, like a telephone company, feels that its cost base for basic service ought to enable it to survive

^{1/} This analysis does not even contemplate the possible interpretation of the Act that would allow "stand alone" purchase of premium services (without first purchasing at least the basic service) as stated in paragraph 12 on page 9 of the NPRM. Such a model defies analysis.

even if no one subscribed to any additional tiers or services (made any long distant calls). To do otherwise would be to allocate part of the basic tier costs unfairly on additional tier or service buyers. The allocation of joint and common costs on basic service rates must be "as reasonably and properly allocated" and far from "nominal".

OTHER PROPOSALS

14. The short time allotted for Comments did not permit the development of in-depth analysis of the overwhelming number of issues raised in the NPRM. Media General offers the following comments on:

a. Payments for re-transmission of local television signals:

As to the Cable Act authorizing local television stations to exercise "re-transmission consent" rights in lieu of mandating carriage, Media General has concerns about rates charged to re-transmit the local television stations' signals. If Media General Cable is forced to pay a fee to retransmit the local broadcasters' signals, it believes any re-transmission fee should be automatically recouped as a "pass through" (with no need to seek further authority from the franchising authority) by the cable company. Since the basic rate will probably be set long before the re-transmission contracts are finalized, a basic rate based on no re-transmission fee would force the cable company to absorb 100%

of the re-transmission fee absent an automatic pass through provision.

In general, a provision for automatic pass through of program service increases would seem to work in everyone's favor. It would cut down on the need for administrative proceedings to adjust rates, it would be equitable to the cable operator who would only be keeping up with its costs, and it would be fair on the subscriber who would continue to receive services at a fair market value. Absent such a provision, a cable operator would be receiving less than fair value at the moment the first such increase become effective and continue to fall farther and farther behind with each increase until a rate adjustment proceeding could be completed, creating the very real possibility of virtually endless rate adjustment proceedings. A provision such as this would also encourage a cable operator to add extra program services to the basic tier, knowing that it would not be penalized by future price increases, thus providing "bonus" programming on the basic service.

b. Cost of Living:

Given its geographic location in one of the nation's highest cost areas, the benchmark matrix, if adopted, must take into account the differing price indices from region to region.

While the suggestion of a local service price index (SPI) is appropriate, Media General believes a matrix built upon SPI as one of its characteristics would be unfair to the cable operators

within high-cost urban centers such as Washington, DC. The inherent weakness in any SPI is the absence of the relative housing and real estate prices between different areas of the country. Since housing and real estate costs are a prime factor in determining wages earned by our employees, and impact expenditures in property and real estate, a failure to include housing and real estate costs would understate the true price difference between the Washington, DC area and the rest of the country. To accurately reflect cost of living differences through the country, Media General suggests the FCC use the ACCRA (formerly American Chamber of Commerce Research Association) cost of living index. We believe the ACCRA cost of living index is a fair measure of costs throughout the country.

c. Open market for converters:

In regard to the establishment of an environment in which a competitive market could exist for equipment, Media General is basically not in favor of allowing converters to be purchased from a party unaffiliated with the local cable company, unless controls exist to ensure only compatible converters are available to its subscribers. The converter box plays an essential role in the delivery of signal to its subscribers. The establishment of the commercial availability of converter boxes from cable operators and retail vendors that are not affiliated with the cable system presents several problems for a cable system operator. They include:

- As stated in the NPRM, theft of service is an obvious problem. Currently, Media General mitigates the theft of service problem by scrambling premium and pay-per-view channels. Scrambling will always remain the greatest deterrent to theft of service. The converter must be compatible with Media General's system.

- If a market for converter boxes was established, the controls over what type of boxes are sold must be taken into consideration. If non-compatible boxes are purchased by a subscriber, the inability to receive a particular cable system's signal would result in a frustrated, angry subscriber. More than likely, the anger would be directed rather unfairly toward Media General.

An uncontrolled free market for converters would lead to consumer dissatisfaction, increased costs to the consumer, and significant theft of certain services, and ultimately would not be in the best interest of the consumer.

d. Pricing of converters:

Media General is concerned about presenting converter charges on the subscriber's bill. If the cost for the converter is broken out on the bill, Media General's current contracts for premium pays (for example, Disney) would require that it pay

license fees on the converter charge. Essentially, the programmers consider the converter charge to be part of the overall retail rate for their product. As a result, the programmers will desire a piece of the action (i.e., the converter charge) since the rental of the converter is essential to receiving their product. Until contracts can be re-negotiated on the above issue with the programmers, the option of whether or not to itemize converter charges should be left up to Media General Cable.

e. Changes in Service:

While Media General agrees in principle that charges for changing service terms should not exceed a nominal amount when the system's configuration permits changes in their service selection to be effected solely by coded entry on a computer terminal, the Commission needs to understand certain aspects of the premium pay and pay-per-view (ppv) business before arriving at regulations for this area.

First, except for a small amount of programming produced by HBO and Showtime, and Disney (which produces most of its product), the core product of both premium and ppv consists of movies whose distribution rights are controlled by a handful of Hollywood studios. Such studios license product to a premium pay channel or on a ppv basis with the cable systems with certain minimum royalty requirements.

Second, while Media General's charge for premium pay channels is expressed as a monthly rate, subscribers are only charged a pro rata portion of the monthly rate based on the actual number of days services are received. When services are dropped, we refund the unexpired portion of the programming charges.

Finally, Media General charges a fee whenever a customer upgrades (adds) a premium service, but never charges a fee whenever a customer downgrades (drops) a premium service.

Due to the above basic factors, Media General would encounter a significant problem if only a nominal charge was required for a subscriber to add a premium service. For example, if it only charged a nominal fee of \$1.00 for an upgrade to Showtime (monthly rate \$11.95) a customer could add and drop Showtime four times in a month and pay only \$5.57 (4 upgrades at \$1.00 each and 4 days of Showtime service at a total cost of \$1.57). With the studios requiring the retail rate for ppv to be between \$3.95 and \$4.95 per movie, the subscriber would use premium pay as pay-per-view. As a result, not only is Media General's ppv business severely undermined, but the entire character of premium pay services is transformed. Cable operators who have invested heavily in addressable technology, vis-a-vis operators who must visit the subscribers home to change premium services, would see a significant decline in premium revenues and thus a disincentive to continue investing in more addressable technology. Also,

premium suppliers would probably start requiring cable operators to charge higher fees or stop refunding unused monthly subscriptions when subscribers drop channels.

In addition, the constant adding and dropping of pay services would cause chaos in the payment of license fees owed to the premium services by the cable company and royalties paid by the premium services to the studios. Currently, the payment of license fees is based upon a monthly average of units determined by adding the beginning of the month premium unit figure plus the end of the month premium unit figure and dividing by two. With pay units being constantly churned, the average per month figure is no longer indicative to the true carriage of a service during a month. As a result, Media General would have to track pays on a daily basis which would considerably complicate a relatively straight-forward calculation.

f. Itemization on billings:

Whether franchise fees and support to PEG channels and costs associated with any other governmental assessments should be itemized on the subscriber's bill is a concern of Media General. It strongly feels it should be allowed the option of whether or not to itemize the costs. Given the highly political nature of its franchise area, Media General may decide not to unduly antagonize the local politicians and to avoid a protracted, unproductive

public struggle over the itemization of the above-mentioned costs.

g. Goodwill (Appendix B):

Media General concurs with the premise that a certain portion of goodwill on many cable companies' books represents payments in expectation of monopolistic rents, but only to the extent such goodwill was incurred after 1984 and prior to 1992, the last deregulated period. Media General also believes that any goodwill incurred prior to 1984 or after 1992 did not represent an expectation of monopolistic rents.

The majority ownership of the Fairfax County franchise has remained unchanged since Media General was awarded the franchise in 1982. Rather than acquiring a system and paying for goodwill, Media General has incurred sizeable start-up losses (\$65 million through the end of 1991). Such losses are normal for any new start-up company and arose primarily due to franchise mandates. The franchise was entered into with the good faith understanding that start-up losses would be recovered through compensatory rates in subsequent years.

Media General believes that both goodwill and start-up losses represent bonafide business investments which should be fully recovered along with an appropriate return on such investments. Recovery is necessary in order to make funds available for future rebuilds and upgrades of existing facilities and, in turn, provide continuing service to subscribers.

h. Rate of Return:

On the matter of reasonable profit, Media General feels strongly that its rate of return (ROR) should exceed the ROR of the telephone companies. Due to competition from DBS, cellular TV, broadcast TV and the telephone companies themselves through video dial tone the relative long-range risk is significantly higher in cable than can ever be imagined for the telephone companies. Furthermore, unlike telephone companies, cable companies operate under franchise agreements of finite lengths. Given its greater risk, a higher rate of return would therefore be the fairest approach to determining reasonable profit.

CONCLUSION

For all of the above reasons Media General Cable of Fairfax Inc., urges the Commission to work toward development of a fair and equitable approach to rate regulation, provided that cable systems that feel aggrieved by the results in their particular circumstance have an opportunity to provide a cost-of-service showing to the Commission to seek relief. Media General also favors FCC jurisdiction for appeals from local decision-making and "pass through" increases on basic services bills caused by increases in costs of included program services and retransmission fees as a way to avoid repetitious rate adjustment proceedings. Media General also supports fair and equitable (not nominal) inclusion of pro rata joint and common costs in the rate for basic service. Finally, Media General urges serious consideration of all of the

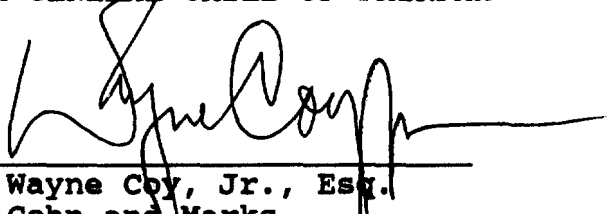
issues raised herein, and reminds the Commission of the vast differences between cable systems and the unique aspects of the Media General System.

In any event, Media General urgently requests that the Commission provide the cable industry with a second opportunity to comment on its preliminary conclusions in this docket by way of a Second Notice of Proposed Rule Making.

Respectfully submitted,

MEDIA GENERAL CABLE OF FAIRFAX

By



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January 27, 1993